Supreme Court of the United States.

No. 5, Original.—October Term, 1904.

The State of Missouri
vs.
The State of Nebraska. } Bill.

The State of Nebraska
vs.
The State of Missouri. } Cross Bill.

[December 19th 1904.]

Mr. Justice Harlan delivered the opinion of the Court.

This is a case of disputed boundary between two States of the Union.

The suit was commenced by an original bill filed in this court by the State of Missouri against the State of Nebraska. The relief sought by the former State is a decree declaring its right of possession of, and its jurisdiction and sovereignty over, certain territory east and north of the center of the main channel of the Missouri River as it runs between the two States at the present time; that Missouri be quieted in its title thereto; and that the State of Nebraska be forever enjoined and restrained from disturbing Missouri in the full enjoyment and possession of said territory.

The State of Nebraska, after answering, filed a cross bill asking a decree confirming the possession, jurisdiction and sovereignty of Nebraska over said territory; that the boundary line between that part of Missouri known as Atchison County and that part of Nebraska known as Nemaha County, be ascertained and established, and permanent monuments erected to indicate the location of such line; and that the State of Missouri be enjoined and restrained from disturbing the State of Nebraska in the full enjoyment and possession of said territory.

The commissioners heretofore appointed to take the evidence have filed their report, and it is agreed that their finding of facts is correct. The case is before us upon questions of law arising out of the pleadings, the report of the commissioners, and the stipulation of the parties.

By an act of Congress of March 6th 1820 provision was made for the admission of Missouri into the Union with the following boundary: "Beginning in the middle of the Mississippi River, on the parallel of thirty-six degrees north latitude; thence west, along that parallel of latitude, to the San Francois River; thence up and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude thirty-

six degrees and thirty minutes; thence west along the same to a point where the said parallel is intersected by a meridan line passing through the middle of the mouth of the Kansas River, where the same empties into the Missouri River; thence from the point aforesaid, north, along the said meridan line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line to correspond with the Indian boundary line; thence east from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down and along the middle of the main channel of the said river Des Moines, to the mouth of the same, where it empties into the Mississippi River; thence due east to the middle of the main channel of the Mississippi River; thence down and following the course of the Mississippi River, in the middle of the main channel thereof, to the place of beginning: *Provided*, That said State shall ratify the boundaries aforesaid: (*a*) *And provided also*, That the said State shall have concurent jurisdiction on the river Mississippi, and every other river bordering on the said State, so far as the said river shall form a common boundary to the said State and any other State or States, now or hereafter to be formed and bounded by the same—such rivers to be common to both; and that the river Mississippi, and the navigable rivers and waters leading to the same, shall be common highways, and forever free, as well to the inhabitants of the said State as to other citizens of the United States, without any tax, duty, impost or toll therefor imposed by the said State." 3 *Stat.* 545.

On the 15th day of January 1831 the State of Missouri, speaking by its Legislature, memorialized Congress to make more certain and definite its northwest boundary. That memorial, among other things, stated: "When this State government was formed, the whole country on the west and north was one continued wilderness, inhabited by none but savages, and but little known to the people or to the Government of the United States. Its geography was unwritten, and none of our citizens possessed an accurate knowledge of its localities, except a few adventurous hunters and Indian traders. The western boundary of the State as indicated by the act of Congress of the sixth of March, eighteen hundred and twenty, and adopted by the Constitution of Missouri, is a 'meridian line passing through the middle of the mouth of the Kansas River, where the same empties into the Missouri River,' and extends from the parallel of latitude of 36 degrees and thirty minutes north, 'to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines.' The part of this line which lies *north of the Missouri River* has never been surveyed and established, and consequently its precise position and extent are unknown. It is believed, however, that it extends about one hundred miles north from the Missouri

River, and almost parallel with the course of the stream, so as to leave *between the line and the river a narrow strip of land*, varying in breadth from fifteen to thirty miles. This small strip of land was acquired by the United States from the Kansas Indians, by the treaty of the third of June, eighteen hundred and twenty-five, and is now unappropriated and at the free disposal of the General Government. . . These considerations seem to us sufficiently obvious to impress upon the public mind the necessity of interposing, whenever it is possible, some visible boundary and natural barrier between the Indians and the whites. The Missouri River, bending as it does, beyond our northern line, will afford the barrier against all the Indians on the southwest side of that river, by extending the north boundary of this State in a straight line westward, *until it strikes the Missouri, so as to include within this State the small district of country between that line and the river*, which we suppose is not more than sufficient to make two, or at the most three, respectable counties. . . In every view, then, we consider it expedient that the district of county in question should be annexed to and incorporated with the State of Missouri; and to that end we respectfully ask the consent of Congress. . . With these views of the present condition and future importance of that little section of country, and seeing the impossibility of conveniently attaching it now or hereafter to any other State, your memorialists consider it highly desirable, and indeed necessary, that it should be annexed to and form a part of the State of Missouri. And to the accomplishment of that desirable end we respectfully request the assent of Congress."

A subsequent act, entitled "An act to extend the western boundary of the State of Missouri to the Missouri River," approved June 7th 1836, provided: "That when the Indian title to all the lands lying between the State of Missouri and the Missouri River shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the western boundary of said State shall be then extended *to* the Missouri River, reserving to the United States the original right of soil in said lands and of disposing of the same: *Provided*, That this act shall not take effect until the President shall, by proclamation, declare that the Indian title to said lands has been extinguished; nor shall it take effect until the State of Missouri shall have assented to the provisions of this act." 5 *Stat.* 34.

It is alleged in the bill that Congress intended by the act of 1836 to meet the wishes of Missouri as expressed in its memorial; that after the passage of that act the President, by proclamation, declared that the Indian title to the lands covered by that act had been extinguished; and that Missouri duly assented to its provisions.

By an act of Congress approved February 9th 1867 Nebraska was admitted into the Union, with the following boundary: "Commencing at a

point formed by the intersection of the western boundary of the State of Missouri with the fortieth degree north latitude; extending thence due west along said fortieth degree north latitude to a point formed by its intersection with the twenty-fifth degree of longitude west from Washington; thence north along said twenty-fifth degree of longitude to a point formed by its intersection with the forty-first of north latitude; thence west along said forty-first degree of north latitude to a point formed by its intersection with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude to a point formed by its intersection with the forty-third north latitude; thence east along said forty-third degree north latitude to the Reya Paha River; thence down the middle of the channel of said river, with its meanderings, to its junction with the Niobrara River; thence down the middle of the channel of said river, following the meanderings thereof, to its junction with the Missouri; thence down *the middle of the channel* of said Missouri River, and following the meanderings thereof to the place of beginning." 14 *Stat.* 391; 13 *Stat.* 47.

It is undisputed in the case that *prior* to July 5th 1867 the bed and channel of the Missouri River were substantially as they had been continuously from the date of the admission of the respective States into the Union, only such variations occurring during that entire period as naturally followed in the course of time from one side of the river to the other. But on the day just named, July 5th 1867, (which was after the admission of Nebraska into the Union,) within twenty-four hours and during a time of very high water, the river, which had for years passed around what is called McKissick's Island, cut a new channel across and through the narrow neck of land at the west end of Island Precinct, (of which McKissick's Island formed a part,) about a half mile wide, making for itself a new channel and passing through what was admittedly, at that time, territory of Nebraska. After that change the river ceased to run around McKissick's Island. In the course of a few years, after the new channel was thus made, the old channel dried up and became tillable land, valuable for agricultural purposes, whereby the old bed of the river was vacated about fifteen miles in length. This change in the bed or channel of the river became fixed and permanent; for, at the commencement of this suit it was the same as it was immediately after the change that occurred on the 5th day of July 1867. The result was that the land between the channel of the river as it was prior to July 5th 1867 and the channel as it was after that date and is now, was thrown on the east side of the Missouri River; whereas, prior to that date it had been on the west side.

The fundamental question in the case is, whether the sudden and permanent change in the course and channel of the river occurring on the 5th

day of July 1867 worked a change in the boundary line between the two States.

The former decisions of this court relating to boundary lines between States seems to make this case easy of solution.

In *New Orleans* v. *United States*, 10 *Pet.* 660, 717, argued elaborately by eminent lawyers, Mr. Webster among the number, this court said: "The question is well settled at common law, that the person whose land is bounded by a stream of water, which changes its course gradually by alluvial formations, shall still hold by the same boundary, including the accumulated soil. No other rule can be applied on just principles. Every proprietor whose land is thus bounded is subject to loss, by the same means which may add to his territory; and as he is without remedy for his loss, in this way, he cannot be held accountable for his gain." It was added—what is pertinent to the present case—that "this rule is no less just when applied to public, than to private rights." The subject was under consideration in *Missouri* v. *Kentucky*, 11 *Wall.* 395, and *Indiana* v. *Kentucky*, 136 *U. S.* 479. But it again came under consideration in *Nebraska* v. *Iowa*, 143 *U. S.* 359, 361, 367, 370. In the latter case, the court, after referring to the rule announced in *New Orleans* v. *United States*, and citing prior cases in which that rule had been recognized, said: "It is equally well settled, that where a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed, such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein. This sudden and rapid change of channel is termed, in the law, avulsion. In *Gould on Waters*, sec. 159, it is said: 'But if the change is violent and visible, and arises from a known cause, such as a freshet, or a cut through which a new channel is formed, the original thread of the stream continues to mark the limits of the two estates.' 2 *Bl. Com.* 262; *Angell on Water Courses*, § 60; *Trustees of Hopkins' Academy* v. *Dickinson*, 9 *Cush.* 544; *Buttenuth* v. *St. Louis Bridge Co.*, 123 *Ill.* 535; *Hagan* v. *Campbell*, 8 *Porter* (*Ala.*) 9; *Murry* v. *Sermon*, 1 *Hawks* (*N. C.*) 56. These propositions, which are universally recognized as correct where the boundaries of private property touch on streams, are in like manner recognized where the boundaries between States or nations are, by prescription or treaty, found in running water. Accretion, no matter to which side it adds ground, leaves the boundary still the center of the channel. Avulsion has no effect on boundary, but leaves it in the center of the old channel." Again, in the same case, the court, referring to the very full examination of the authorities to be found in one of the opinions of Attorney General Cushing, (8 *Op. Atty. Gen'l* 175,) said: "The result of these authorities puts it beyond doubt that accretion on an ordinary river would leave the boundary between two States the varying center of the channel, and that avulsion would estab-

lish a fixed boundary, to wit, the center of the abandoned channel. It is contended, however, that the doctrine of accretion has no application to the Missouri River, on account of the rapid and great changes constantly going on in respect to its banks; but the contrary has already been decided by this court in *Jeffries* v. *Land Company*, 134 *U. S.* 178, 189." In *Nebraska* v. *Iowa*, it appeared that the Missouri River near the land there in dispute had pursued a course in the nature of an ox-bow, but it suddenly cut through the neck of the bow and made for itself a new channel. The court said: "This does not come within the law of accretion, but that of avulsion. By this selection of a new channel the boundary was not changed, and it remained as it was prior to the avulsion, the center line of the old channel; and that, unless the waters of the river returned to their former bed, became a fixed and unvarying boundary, no matter what might be the changes of the river in its new channel."

Manifestly, these observations cover the present case and make it clear that the boundary line between Missouri and Nebraska in the vicinity of Island Precinct cannot be taken to be the middle of the channel of the Missouri River, as it has been since the avulsion of 1867 and now is, but must be taken to be the middle of the channel of the river as it was prior to such avulsion. We cannot see that there are any facts or circumstances that withdraw the present case from the rule established in former adjudications.

Counsel for Missouri contend that the act admitting Missouri into the Union, the memorial sent by the Legislature of that State to Congress in 1831, and the act of June 7, 1836, with the proclamation of the President as to the extinguishment of Indian titles to lands between Missouri, as originally bounded, and the Missouri River, show that Congress intended that, so far as the boundary of the State of Missouri was concerned, the middle of the channel of the Missouri River, wherever it may be at any particular time—and regardless of any changes, however caused or however extended, or permanent, suddenly occurring in its course or channel—was to be taken as a perpetual, natural monument fixing the boundary line. We cannot accept this view. We perceive no reason to believe that Congress intended, either by the acts of 1820 and 1836 relating to Missouri or the act admitting Nebraska into the Union, to alter the recognized rules of law which fix the rights of parties where a river changes its course by gradual, insensible accretions, or the rules that obtain in cases where, by what is called avulsion, the course of a river is materially and permanently changed. Missouri does not dispute the fact that when Nebraska was admitted into the Union the body of land described in the present record as Island Precinct was in Nebraska. It is equally clear that those lands did not cease to be within the limits of Nebraska by reason of the avulsion of July 5th 1867.

For the reasons stated we adjudge, in respect of the matters involved in this suit, that the middle of the channel of the Missouri River, according to its course as it was prior to the avulsion of July 5th 1867, is the true boundary line between Missouri and Nebraska. Accordingly, the original bill must be dismissed, and a decree entered in favor of the State of Nebraska on its cross bill.

It appears from the record that about the year 1895 the county surveyors of Nemaha County, Nebraska, and Atchison County, Missouri, made surveys of the abandoned bed of the Missouri River, in the locality here in question, ascertained the location of the original banks of the river on either side, and to some extent marked the middle of the old channel. If the two States agree upon these surveys and locations as correctly marking the original banks of the river and the middle of the old channel, the court will, by decree, give effect to that agreement; or, if either State desires a new survey the court will order one to be made and cause monuments to be placed so as to permanently mark the boundary line between the two States. The disposition of the case by final decree is postponed for forty days, in order that the court may be advised as to the wishes of the parties in respect of these details.

True copy.

Test:

Clerk Supreme Court, U. S.